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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 979

DEFENSE PLANT CORPORATION

Appellant,

vs.

COUNTY OF BEAVER, PENNSYLVANIA

APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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County Solicitor,
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DEFENSE PLANT CORPORATION,

Appellant,

vs.

COUNTY OF BEAVER, PENNSYLVANIA

APPEAL FROM THE JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT, AT No. 201, MARCH TERM, 1944

APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now County of Beaver, appellee, and, under the provisions of Rule 12, par. (3), of the Rules of the Court, files the following statement disclosing matters and grounds making against the jurisdiction of this Court asserted by appellant, and includes herein its motion to dismiss or affirm:

(1) The judgment sought to be reviewed in this appeal is one in affirmance of an assessment of appellant's mill or

manufactory located in appellee County. The assessment was made by the proper authority under the provisions of a Pennsylvania Statute (section 201 of the General County Assessment Law of May 22, 1933, P. L. 853; 72 Pardon's Statutes § 5020-201) designating "mills and manufactories of all kinds" as real estate subject to taxation for local purposes and directing their assessment for application thereto of "the annual rate" of local tax levies. The appealed decision is officially reported as *Defense Plant Corporation Tax Assessment Case*, 350 Pa. 520, (Advance Reports of November 24, 1944).

(2) Under the long settled decisional law of the State, a mill or manufactory is an integral unit of real property comprised of land, buildings, and all machinery upon the premises essential to the operation of the mill or manufactory. In its "Statement as to Jurisdiction" filed herein, appellant states (p. 6) that it "has at no time sought to contest this construction by Pennsylvania courts of the Pennsylvania tax law". Pursuant to the State law, appellant's machinery upon the premises of its manufactory and essential to its existence and operation as such was included in the real estate assessment of its manufactory.

(3) Appellant is a government-owned corporate agency or instrumentality of the United States, created or organized by the Reconstruction Finance Corporation under the authority of U. S. C., Title 15, § 606b. All property of such a government-owned corporation is wholly immune from local taxation unless such taxation is permitted by Congress: *Clallam County* v. *United States*, 263 U. S. 341. By the Act of January 22, 1932, c. 8, § 10, 47 Stat. 9, as amended by the Act of June 10, 1941, c. 190, § 3, 55 Stat. 248, (U. S. C. A., Title 15, § 610), Congress legislated upon

the subject. The relevant language of said Act is as follows:

> "The [Defense Plant Corporation], including its franchise, its capital, reserves, and surplus and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. * * * Such exemptions shall also be construed to be applicable to * * * personal property owned by [Defense Plant Corporation] * * *. But such exemptions shall not be construed to be applicable in any state to any buildings which are considered by the laws of such state to be personal property for taxation purposes."

(4) By its assignment of error (1) and that part of assignment (2) which refers to the Constitution of the United States, appellant seeks to invoke the jurisdiction of this Court to obtain a review of the appealed decision as one in favor of the constitutionality of the State law as construed and applied below. Appellee submits that appellant's attempt to invoke this Court's jurisdiction upon such a ground is frivolous—for the reason that the ordinary immunity from local taxation enjoyed by appellant by implication from the Constitution has been made the subject of legislation by Congress, as hereinbefore shown, and that, accordingly, the only possible Federal question in this case concerns the *scope* of said legislation in *derogation* of said ordinary immunity.

In support of its contention, appellee avers that the appealed decision deals with no question of constitutional immunity whatsoever and that no decision of any such question was, or is, necessary to a decision of this case.

As stated by the Court below at the beginning of its opinion: "The question is, What did Congress mean by the term 'real property' in the Act waiving immunity from taxation of certain property owned by government agencies?" And again, as stated by the same Court on p. 524 of the official report: "What did Congress intend by the term 'real property' in the statute which was designed to waive immunity in aid of the revenues of local communities in which industrial establishments were engaged in manufacturing defense material? Did it intend 'real property' to include the entire mill or manufactory (as provided by local law) or only the land and vacant buildings without the mechanical part of the plant?" That the court of first instance (the Court of Common Pleas of Beaver County, Pa.) likewise conceived the question is shown when it stated in its opinion (p. 133a): "The vital question in connection with the present case is what is intended by the Act of Congress by its reference to real property."

(5) By its assignment of error (3) and that part of assignment (2) which refers to the "laws" of the United States, appellant invokes jurisdiction here to obtain a review of the appealed decision as one holding the State law not to be repugnant to the aforesaid Act of Congress. Thus, appellant presents the question of the scope of the Congressional waiver. Appellee submits that this question is likewise frivolous rather than substantial as required by Rule 12, par. 1, of this Court.

As in sole support of its burden to demonstrate the substantial character of this question, appellant asserts that it "owns plant machinery and equipment which has been assessed for taxation under the Pennsylvania tax statute hereinbefore quoted in the aggregate sum of approximately $29,900,000" (p 11 of its "Statement as to Jurisdiction").

Appellee submits that said assertion of fact has no relevancy in law to a determination of substantiality in the Federal question here presented. Whether this question is "substantial" is determinable in law by the existence or non-existence of any judicial doubt regarding the intention of Congress in its enactment of the legislation involved—the intention to be determined by a consideration of the words used, the context, the purpose of the law, and the circumstances under which the words were employed: *Puerto Rico v. Shell Co.*, 302 U. S. 253, 258, and cases there cited. Appellant cites no decisions of any court whatsoever in conflict with the unanimous decisions of both courts below upon the point, and appellee avers that no such conflicting decision exists.

Appellee submits that the intention of Congress is entirely free from doubt, as the following brief argument will demonstrate:

(a) The evil to be remedied by the Act of Congress was the normal immunity of appellant's property from local taxation in the various states where it is located. The only possible cure for that evil is an application of the Act according to the laws of the several states, varied though they be. That such an application was what Congress intended is beyond peradventure of doubt.

(b) The statutory language itself proves the point. It ordains that "*any real property of the corporation shall be subject to State, Territorial, county, municipal or local taxation to the same extent according to its value as other real property is taxed*". The word "any" has a broadly inclusive significance that may not be overlooked. That it bears a relation to the word "other" which appears later in the clause is certain. The word "extent" means the space or degree to which a thing is stretched or extended and is synonymous with "compass": 35 C. J. S. 291, where it is shown that

the word has also been defined by the courts as "nature or character". When the use of these words "any", "same extent", and "other" is considered in the light of the plain purpose of the Act as one in waiver of the ordinary immunity from local taxation, it is manifest that Congress was permitting an *ad valorem* taxation of any real property of appellant corporation as any real property of like nature held by others than appellant is taxed locally. Hence, it is only *sensible* to conclude that Congress intended local law to determine what particular property falls within the locally taxable category of real property. Such an intention is the only *natural* one in the circumstances.

(c) Congress made no attempt to define the words "real property". There is no federal general common law (*Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78) and, hence, no federal common law definition of the words. But Congress knew that the several states had their own laws, both statutory and decisional, defining them for the purpose of local taxation. Clearly, therefore, it intended local definitions to apply.

(d) The assessment of such property, appeals therefrom, the levying of the tax, and the procedure for enforcing its collection, are all administered under local laws and cannot be otherwise administered. No necessity exists, as in federal revenue statutes and other nationally administered laws, for any uniform application thereof throughout the nation. Certainly, any attempt at uniform application would destroy the very purpose of the Act to permit *local taxation* of such property as other similar property is taxed.

(e) The legislative history of the Act confirms the point. By S. Rept. No. 292, of the 77th Congress, 1st Session, reporting on S. 1438 of that session (the amending bill involved), the "original policy of the

Congress" was "reaffirmed", that policy being, as there stated, one to provide "that real property of the corporation is to be subject to *nondiscriminatory* state and local taxes". Since a tax may discriminate *in favor of* as well as *against*, it is clear that Congress intended *neither* result to obtain and that appellant should gain no local tax preference over any other tax-paying owner of any similar "real property" located in any particular community. Accomplishment of such a result necessarily requires application of local law in defining the scope of the words "real property".

(f). Turning now to the language of the Act preserving the normal immunity of appellant's *personal property* from local taxation except as to its "buildings" located in states where "buildings" are subjected to personal property taxation, two things are clear: (a) that this portion of the Act deals with local *personal property tax laws* and *not* with real property tax laws; and (b) that Congress intended to subject appellant's "buildings" to the tax laws of the separate states according to the *operation and application* of those laws, whether they pertain either to personal property or to real property. Point (b) emphasizes the intention that local law should govern the application of the Act *in its entirety*. (And it is to be observed parenthetically that point (a) has a particular application to the case at bar wherein appellant's sole complaint is *not directed* at any taxation of its machinery as *personal* property under a state law taxing personal property, but *is directed* at the law of the state which makes its machinery an "integrated part" of appellant's *real* property, as stated by the court below (p. 522 of the officially reported decision).

(g). In conclusion, appellee reasserts its position that the intention of Congress to require application

of local law in any determination of the scope of the words "any real property" is clear and undebatable.

WHEREFORE, upon the ground that no substantial Federal question is presented by the record, appellee respectfully moves the Court to dismiss the appeal herein or to affirm the appealed judgment.

COUNTY OF BEAVER,
Appellee,
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